

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

JUL 18 2007

In the Matter of

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FCC Docket No. 05-317

)

Waiver of Digital Testing Pursuant

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To the Satellite Home Viewer Extension

)

MB Docket No. 05-317

And Reauthorization Act of 2004

)

ORDER

Adopted: July 12, 2007

Released: July 13, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"),¹ which amended the copyright laws and the Communications Act of 1934, as amended (the "Act"). SHVERA created an opportunity for subscribers to qualify, via signal strength tests, to receive distant digital television broadcast signals from satellite carriers. SHVERA also provided television stations with the ability to request a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test under certain circumstances.

2. Specifically, SHVERA amended Section 339(a)(2)(D) of the Act to permit satellite subscribers to qualify for satellite retransmission of distant digital network signals under circumstances specified in the Act.² A satellite subscriber whose household is predicted "unserved" by the analog signal of any station affiliated with a particular network is eligible to receive, via satellite, the digital signal of a distant station affiliated with that network.³ A satellite subscriber whose household is predicted to be served⁴ by the analog signal of a local network station may attempt to demonstrate eligibility for reception of the distant digital signal via satellite based on a signal test to determine if the over-the-air digital signal of local network stations does not meet the digital signal intensity standard in Section 73.622(e)(1) of the Commission's rules.⁵ Subscribers were able to request such a test beginning April 30, 2006, if the local network station whose signal would be tested is within the top 100 television

¹ The Satellite Home Viewer Extension and Reauthorization Act of 2004, ("SHVERA"), Pub. L. No. 108-447, § 207, 118 Stat. 2809, 3393 (2004), (to be codified at 47 U.S.C. § 339), § 204(a). SHVERA was enacted as title IX of the "Consolidated Appropriations Act, 2005."

² See 47 U.S.C. § 339(a)(2)(D)(i), as amended by Section 204 of SHVERA.

³ 47 U.S.C. § 339(a)(2)(D)(i)(I).

⁴ See 47 U.S.C. § 339(c)(3) (mandating the Individual Location Longley-Rice (ILLR) model to predict the ability of individual locations to receive analog signals of Grade B intensity).

⁵ In other words, the test would show that the household is unserved by over-the-air digital signals from any station affiliated with a particular network. See 47 U.S.C. § 339(a)(2)(D)(i)(I), as amended by Section 204 of SHVERA. See also *Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Notice of Proposed Rulemaking, ET Docket No. 06-94, 21 FCC Rcd 4735 (2006), which proposes rules governing the conduct of such tests.

markets and has received a tentative channel designation on its allotted digital channel or has lost interference protection. Beginning July 15, 2007, subscribers may request a signal strength test for any full power local network station.⁶

3. SHVERA also amended Section 339(a)(2)(D)(viii) of the Act to allow stations to request a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test.⁷ On May 1, 2006 the Commission granted 23 digital testing waivers for stations subject to the April 30, 2006 deadline.⁸ For a number of stations, these waivers were extended based on a proper showing that the station's digital signal coverage continues to be limited due to the unremediable presence of one of the statutory criteria.⁹

II. BACKGROUND

4. Section 339(a)(2)(D)(viii) of the Act sets forth the criteria and the standard for the Commission's review of station requests for waiver of a digital signal strength test. To be grantable, a waiver request must provide clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following criteria:

- (I) the need for international coordination or approvals;
- (II) clear zoning or environmental legal impediments;
- (III) force majeure;
- (IV) the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna;
- (V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or
- (VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market.

⁶ See 47 U.S.C. § 339(a)(2)(D)(vii), as amended by Section 204 of SHVERA. The statute does not define the top 100 markets. In the context of the digital transition and station build-out requirements, the Commission's schedule for construction and operation of broadcasters' allotted digital broadcast facilities was based on market rank. See 47 C.F.R. § 73.624(d). The term "television market" is defined in this context as the Designated Market Area ("DMA") as defined by Nielsen Media Research as of April 3, 1997. See 47 C.F.R. § 73.624(d)(ii). The Commission has continued to use this definition in connection with transition deadlines, including the "use-or-lose" build-out deadlines in the Second DTV Periodic Review. See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004), at ¶ 12 and n.16 (citing *Fifth Report and Order*, 12 FCC Rcd at 12840-41, ¶ 76 (1997)); 47 C.F.R. § 73.624(d).

⁷ See 47 U.S.C. § 339(a)(2)(D)(viii), as amended by Section 204 of SHVERA.

⁸ *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("First Round Order")*, 21 FCC Rcd 4813 (MB 2006).

⁹ *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 21 FCC Rcd 12894 (MB 2006)(15 extensions granted); and *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, DA 07-1957 (MB released April, 30, 2007)(nine extensions granted).

The Act further provides that under no circumstances may such a waiver be based upon financial exigency. All waiver requests are required to be filed not less than five months from the pertinent implementation deadline.¹⁰

5. With respect to local network stations not subject to the April 2006 deadline, SHVERA provides that waivers must be filed no later than February 15, 2007, with Commission action required by July 15, 2007.¹¹ By Public Notice released November 17, 2005, the Commission set forth the procedures for network stations to request waivers, including those for stations subject to the July 2007 deadline.¹² The Commission received 28 requests for waiver related to the July 15, 2007 deadline. Subsequently, the Bureau released a public notice outlining the timing and procedures for oppositions.¹³ No oppositions were filed.

6. We have carefully considered each waiver request, based on the statutory criteria. In doing so, we have considered all of the facts presented by the parties, as well as station filings and information contained in the Commission's Consolidated Database System, which are available to the public. We emphasize that denial of a waiver request will not automatically result in the delivery of a distant digital signal to a subscriber, but merely permits a subscriber to request a digital signal test. Under SHVERA, a subscriber may only request delivery via satellite of a distant digital signal if the test shows that the subscriber cannot receive an adequate local over-the-air digital signal. Section 339(a)(2)(D)(iii)(III) of the Act also requires that to be eligible for distant digital signals, subscribers must subscribe to the analog local-into-local package, where offered, and receive the analog signal of the network station affiliated with the same network, where available.¹⁴ For new local-into-local markets, subscribers receiving a distant digital signal of a network station can continue to receive that signal after a satellite carrier begins offering local-into-local digital signals in the market only if the subscriber also subscribes to the digital signal of the local station affiliated with the same network.¹⁵

7. Our rulings on each of the 26 remaining waiver requests follow below. Two stations withdrew their waiver requests.¹⁶ For the reasons noted, we are granting digital testing waivers for 18 stations. With respect to eight stations, we conclude that their permittees or licensees have failed to demonstrate, by clear and convincing evidence, that their digital signal coverage is limited due to the unremediable presence of one of the statutory criteria noted above.

III. DISCUSSION

8. Need for International Coordination or Approvals. Because radio communication

¹⁰ 47 U.S.C. § 339(a)(2)(D)(viii).

¹¹ 47 U.S.C. § 339(a)(2)(D)(vii)(I)(bb).

¹² *TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007*, Public Notice, DA 05-2979 (rel. November 17, 2005) ("Waiver Public Notice").

¹³ *Procedures for Filing Oppositions and Responses Regarding Requests for Digital Testing Waivers Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Public Notice, DA 07-1309 (rel. March 15, 2007) ("Second Round Waiver Public Notice"). The Public Notice listed 29 stations requesting waivers but one station, KTRK-DT of Houston, TX, was also listed in error as being in San Francisco, CA.

¹⁴ 47 U.S.C. § 339(a)(2)(D)(iii)(III).

¹⁵ 47 U.S.C. § 339(a)(2)(D)(v)(I).

¹⁶ MMM License III L.L.C., the licensee of KULR-TV, Billings, Montana, withdrew its request. Letter from counsel for MMM License II L.L.C. (May 24, 2007). Indiana Broadcasting, LLC, licensee of WANE-DT Fort Wayne, Indiana, also withdrew its request. Letter from counsel for Indiana Broadcasting, LLC (June 22, 2007).

services have the potential to produce signal transmissions that go beyond national borders, international coordination often is required to protect existing television service and avoid interference.¹⁷ Section 339(a)(2)(D)(viii)(I) of the Act acknowledges that a station's digital signal coverage may be limited due to the need for international coordination or approval of applications for a new or modified digital construction permit.

9. Two permittees requested waivers because they have been unable to complete construction of their authorized DTV facilities due to the need for international coordination. MMM License II LLC, licensee of KFBB-DT (ABC), Great Falls, Montana, states that grant of its modification application to maximize facilities was delayed due to Canadian coordination issues and was only obtained on February 8, 2007.¹⁸ Malara Broadcast Group of Duluth Licensee, permittee of KDLH-DT (CBS), Duluth, Minnesota, states that grant of its pending modification application to maximize facilities has been delayed by Canadian coordination issues.¹⁹ Malara's modification application was granted on April 19, 2007. Accordingly, we grant both of these stations six-month digital testing waivers. Because issues with Canadian coordination have been resolved, both stations should be able to proceed expeditiously with construction of their digital facilities and should not need to receive an extension of these waivers based on this criterion.

10. **Force Majeure.** SHVERA further provides that a waiver request may be granted when a station's digital signal coverage is limited due to force majeure.²⁰ Force majeure may be defined as an event that can be neither anticipated nor controlled;²¹ may be broader than "act of God," which is limited to natural forces;²² and may include a terrorist attack as an extreme, unforeseeable occurrence.²³ Seven stations submitted waiver requests based on the force majeure criterion but one was subsequently withdrawn.²⁴ As described below, we grant three of these requests and deny three.

11. Barrington Albany License LLC, the permittee of WFXL-DT (NBC), and Raycom Media Inc., the permittee of WALB-DT(FOX), both of Albany, Georgia, have requested testing waivers. They state that on June 1, 2006, an Army helicopter crash damaged the WFXL tower which later had to be demolished.²⁵ The destruction of the tower also destroyed an adjacent tower used by WALB-TV. Both permittees state that they are working to construct a joint tower for the digital facilities of WFXL and WALB. They hope to have these facilities completed in the near future but that they have filed requests

¹⁷ See generally, 2001 Report on International Negotiations, Spectrum Policy & Notifications, Planning and Negotiations Division, International Bureau, Federal Communications Commission (rel. September 1, 2001).

¹⁸ MMM License II request at 1.

¹⁹ Malara states that it plans to top mount its digital antenna but has not yet done so because its application was awaiting Canadian coordination and this has necessitated the use of a side mounted antenna. Malara states that the station is unable to serve 28.7 percent of its authorized coverage area. Malara request at 2.

²⁰ See 47 U.S.C. § 339(a)(2)(D)(viii)(III).

²¹ *Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333, 16347 at n. 97 (2003) citing Black's Law Dictionary 254 (Pocket Edition 1996).

²² *Webster's Encyclopedic Unabridged Dictionary of the English Language* at 554 (1989).

²³ *Cf. OWBR, LLC v Clear Channel Communications, Inc.*, 266 F. Supp. 2d 1214, 1222 (D. Haw. 2003).

²⁴ MMM License III LLC, the licensee of KULR-TV, Billings, Montana, requested waiver based on force majeure but withdrew its request because it has completed construction of its digital facilities. Letter from counsel for MMM License II LLC, permittee of KULR-DT Billings, Montana dated May 24, 2007.

²⁵ Barrington and Raycom requests at 2.

for waivers out of an abundance of caution.²⁶ We find that the helicopter crash constitutes force majeure and justifies grant of a six-month digital testing waiver for both WFXL-DT and WALB-DT.

12. American Broadcasting Companies, Inc., the permittee of WABC-DT (ABC), New York, New York states that its digital signal coverage is limited because the September 11, 2001 terrorist attacks destroyed its facilities at the World Trade Center and it has not yet been able to construct permanent replacement facilities.²⁷ The terrorist attack in 2001 clearly constitutes force majeure and justifies the grant of a six-month digital testing waiver for WABC-TV.

13. Hoak Media of Dakota, LLC, permittee of KFYZ-DT (NBC), Bismarck, North Dakota, states that the station's digital signal coverage is limited due to actions by the station's prior licensees who had requested and received a digital construction permit which specified smaller facilities than those currently authorized.²⁸ Hoak acquired KFYZ on January 3, 2007. Although it has ordered the equipment necessary to complete construction of the authorized digital facilities, Hoak states that it may not be able to complete them before the July deadline, given the winter weather conditions in Bismarck, North Dakota.²⁹ The request describes a situation that has arisen as a result of the station's sale and the foreseeable winter conditions in North Dakota, but does not set forth circumstances that constitute force majeure as used in SHVERA. We deny the request, and KFYZ-DT is therefore subject to the July 15, 2007 testing deadline.

14. ABC, Inc., permittee of WPVI-DT (ABC), Philadelphia, Pennsylvania asserts that it is entitled to a waiver based on force majeure because the station is required to use a low VHF channel as post-transition digital channel.³⁰ The licensee also claims that it is entitled to a waiver because it is compelled to use a truncated ERP of 1000 kW, which has further limited its digital signal coverage.³¹ We find that the justifications asserted by WPVI-DT do not constitute force majeure as that term is used in the context of SHVERA.³² We deny the request for waiver, and WPVI-DT is therefore subject to the July 15, 2007 testing deadline.³³

15. We also deny the waiver request of Channel 11 License, Inc. ("Channel 11"), licensee of KRIV-TV (NBC), Chisholm, Minnesota because the circumstances it alleges as justification do not constitute force majeure. Channel 11 first argues that it is not subject to the July 15, 2007 testing deadline because it is a satellite station.³⁴ However, as Channel 11 concedes in its request,³⁵ SHVERA does not address the issue of satellite stations nor does it exempt them from digital signal testing by

²⁶ *Id.* The stations' modification applications were granted on March 20, 2007 and January 25, 2007, respectively.

²⁷ ABC request at 1. This station was determined not to be subject to the April 2006 deadline because it had neither received a tentative channel designation or lost interference protection at the time waivers for that deadline were required to be filed. *First Round Order*, 21 FCC Rcd at 4826.

²⁸ Hoak request at 1.

²⁹ *Id.*

³⁰ ABC request at 1.

³¹ *Id.* at 2-3.

³² See *First Round Order*, 21 FCC Rcd at 4821-23 (making a decisional distinction in granting waivers to stations affected by terrorist attacks and hurricanes and those with financial difficulties or death of the station's owner).

³³ This station was determined not to be subject to the April 2006 deadline because it had neither received a tentative channel designation or lost interference protection at the time waivers for that deadline were required to be filed. *First Round Order*, at 4826.

³⁴ Channel 11 request at 2-4.

³⁵ *Id.* at 2.

satellite subscribers.³⁶ Further, the licensee's decision to "flash cut" to digital operation at the end of the transition³⁷ does not constitute a circumstance that is contemplated in SHVERA's use of the term force majeure. We therefore deny the request, leaving KRII-DT subject to the July 15, 2007 testing deadline.

16. No Satellite Carrier Providing Local-into-Local Analog Service. Section 339 gives the Commission authority to grant a testing waiver where no satellite carrier is providing the retransmission of the analog signals of local network stations in the requesting station's local market.³⁸ Five stations requested waivers based on this criterion and we grant all five. Specifically, KLAX-DT(ABC), Alexandria, Louisiana;³⁹ WNKY-DT(NBC), Bowling Green, Kentucky;⁴⁰ WWNY-DT(FOX), Carthage, New York and WNYF-DT(FOX), Watertown, New York;⁴¹ and KIEM-DT(NBC), Eureka, California⁴² are licensed to communities in markets where there is no satellite delivered local-into-local service and are therefore eligible for six-month digital testing waivers.⁴³

17. Substantial Decrease in Digital Signal Coverage Due to Necessity of Using Side-Mounted Antenna. Section 339(a)(2)(D)(viii)(IV) of the Act provides for grant of a digital testing waiver upon a showing by clear and convincing evidence that the station's digital signal coverage area is substantially decreased due to the unremediable need to use a side-mounted antenna. As several stations indicate, mounting a digital antenna on the side of the tower at a lower location where the tower structure is wider often causes blockage and reduces the number of viewers that the signal can reach.⁴⁴ In addition, many of the stations requesting waivers state that they have mounted their analog antenna at the top tower position and cannot move the digital antenna to the top without substantially affecting analog service.⁴⁵ Thirteen stations filed waiver requests based on the present necessity to use a side mounted antenna.

18. The Media Bureau's First Round Order addressing waiver requests for stations in the top 100 markets denied all requests based on this criterion.⁴⁶ The Bureau found that either the stations failed to provide any information comparing present digital coverage area to the digital coverage area of maximized facilities⁴⁷ or that the use of a side-mounted antenna did not result in a "substantial" reduction of the requesting stations' coverage areas.⁴⁸ The Bureau also rejected claims of substantial loss of coverage area from stations that represented to the Commission that they came close to meeting

³⁶ See 47 U.S.C. § 339 (a)(2)(D)(vii)(I).

³⁷ Channel 11 request at 3-4.

³⁸ 47 U.S.C. § 339(a)(2)(D)(viii)(VI).

³⁹ This station is in the Alexandria, Louisiana designated market area ("DMA").

⁴⁰ This station is in the Bowling Green, Kentucky DMA.

⁴¹ These stations are in the Watertown, New York DMA.

⁴² This station is in the Eureka, California DMA.

⁴³ See DIRECTV, <http://www.directv.com/DTVAPP/packProg/localChannels.jsp?assetId=900018> (visited on June 27, 2007); Dish Network, <https://customersupport.dishnetwork.com/netqualweb/localmarkets.pdf>. (visited on June 27, 2007).

⁴⁴ See, e.g., WTGV, Inc. request on behalf of WTVG-DT.

⁴⁵ See, e.g., West Virginia Media Holdings LLC request on behalf of WBOY-DT.

⁴⁶ *First Round Order* at 4823.

⁴⁷ *Id.* at 4824.

⁴⁸ *Id.* ("A reduction in service area only slightly more than the rounding and calculation tolerance of 0.5% used by the Commission clearly cannot be deemed substantial.").

the 100 percent population service requirement for purposes of meeting their “use-or-lose” deadline.⁴⁹ The Bureau acknowledged that the Commission’s “use-or-lose” policy, in the context of the DTV transition and build-out requirements, involves consideration of whether a certain percentage of viewers is served by the constructed facilities, rather than a comparison of the constructed and authorized digital signal coverage area that applies in the context of the SHVERA testing waivers.⁵⁰ However, the Bureau noted that the more salient point is that some stations advanced contrary arguments in different proceedings: in the context of the “use or lose” deadline, they contended that the side-mounted service is close to 100 percent, while in the context of the SHVERA testing waivers, they contend the same decrease in service is substantial.⁵¹

19. In this second round of waiver requests, every station filing pursuant to this criterion claims a loss of well over 10 percent of coverage area because of the necessity to use a side mount antenna.⁵² We note that Congress, in passing SHVERA, did not give the Commission guidance on how extensive the loss occasioned by the use of a side mounted antenna should be to justify grant of a testing waiver. We believe that the percentages of coverage loss are not, by themselves, determinative of what is “substantial” under SHVERA. The focus of the statute is television service to viewers because the purpose of the signal test is to enable viewers who cannot receive a digital signal over the air to receive instead a distant network signal via satellite. If a station is serving close to 100 percent of its viewing population, it cannot be said to have suffered a substantial decrease in coverage even though it might not be reaching 10 percent or more of its geographical service area. Similarly, if most of the loss of geographic coverage is over water or unpopulated areas, it cannot be found to have incurred a substantial loss of coverage.⁵³ Using this interpretation of the term “substantial,” we grant waivers to eight stations and deny the remaining five requests.

20. West Virginia Media Holdings, LLC, licensee of WBOY-DT (NBC), Clarksburg, West Virginia, states that the station’s analog antenna is mounted at the top of the tower and cannot be moved until after the transition when it will be replaced by the digital facility.⁵⁴ The licensee states that its side mounted facilities serve only 37.3 percent of the area and 4.3 percent of the population predicted to be served by its post-transition VHF channel facilities.⁵⁵ Although it appears that this request wrongly

⁴⁹ *Id.* at 4825. By July 1, 2005, stations affiliated with the top four networks in the top 100 markets that received a tentative channel designation on their current digital channel were required to construct full, authorized facilities. Stations that received a channel designation on a channel that is not their current DTV channel were required to serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based. By July 2006, all other commercial stations that received a tentative channel designation on their current digital channel were required to construct their full authorized DTV facilities and those that received a tentative channel designation on a channel that is not their current DTV channel were required to serve at least 80 percent of their replication coverage. See *DTV Build-Out, Requests for Waiver of July 1, 2005 and July 1, 2006 “Use or Lose” Deadlines (“Use or Lose Order”)* FCC 07-90 (rel. May 18, 2007) at 3, citing *Second Periodic Review of the Commission’s Rules and Policies Affecting Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279 (2004).

⁵⁰ *First Round Order* at 4825.

⁵¹ *Id.* at 4824-25.

⁵² The claimed losses range from 12.5 percent for WJRT-DT, Flint, Michigan to over 75 percent for WTRF-DT, Wheeling, West Virginia. See discussion, *infra*.

⁵³ The opposite would hold true if a station were reaching 98 percent of its geographic service area but was only reaching 5 percent of its population. In that case, a digital testing waiver clearly would be appropriate.

⁵⁴ WBOY-DT request at 1-2.

⁵⁵ *Id.* at 2.

compares current service with post-transition service,⁵⁶ Commission records indicate that the station is presently able to serve only 45.1 percent of its predicted pre-transition population. We find that West Virginia Media Holdings, LLC has presented credible evidence of a substantial loss of service due to use of a side mounted antenna, and WBOY-DT is therefore granted a six-month digital testing waiver.⁵⁷

21. Fisher Broadcasting-Oregon TV, L.L.C., the permittee of station KCBY-DT (CBS), Coos Bay, Oregon, states that it has constructed digital facilities that serve 80 percent of the 1997 population on which its replication facilities were based pursuant to the Commission's "use-or-lose" deadline, but that it is prevented from installing a top mounted antenna because its analog antenna is currently in that position.⁵⁸ It further states that the use of a side mounted digital antenna with directionalized pattern at reduced power results in a substantial reduction in its digital coverage area and a loss of approximately 20 percent of the station's predicted service population.⁵⁹ We find that KCBY-DT is entitled to a six-month digital testing waiver based on the evidence it has presented showing a substantial loss of coverage area.⁶⁰

22. Fisher Broadcasting-Oregon TV, L.L.C., the permittee of station KVAL-DT (CBS), Eugene, Oregon, states it has met its obligation to construct facilities serving 80 percent of its replication population but it is prevented from installing a top mounted DTV antenna because its analog antenna is currently mounted at the top of its tower.⁶¹ It further states that using a side mounted digital antenna substantially reduces its predicted coverage area and that it is unable to serve 20 percent of its service population.⁶² We find that Fisher Broadcasting-Oregon has presented sufficient evidence to justify a six-month digital testing waiver.

23. Hoak Media of Nebraska License, L.L.C., permittee of KHAS-DT (NBC), Hastings, Nebraska, states that the station needs to use a side mounted antenna until end of the transition when it will use its top mounted analog antenna for digital operations.⁶³ The station is unable to serve 69.3 percent of its predicted coverage area as a result.⁶⁴ Although it appears that this request makes the wrong comparison of current service with post-transition service,⁶⁵ Commission records indicate that KHAS-DT can only serve 46.9 percent of the population that it is authorized to serve by its pre-transition construction permit. We also note that the percentage loss of area coverage would be as great, or greater, than the population loss. We find that these losses are substantial and that, accordingly, KHAS-DT is

⁵⁶ The appropriate comparison should be current coverage with authorized coverage pre transition.

⁵⁷ WBOY-DT was also granted a use-or-lose waiver until February 17, 2009 due to the necessity to use a side mounted antenna. *Use or Lose Order, supra*. n.49, at 18.

⁵⁸ Fisher Broadcasting-Oregon request at 1-2.

⁵⁹ *Id.* at 2.

⁶⁰ KCBY-DT met its use-or-lose population coverage requirements but nonetheless has justified grant of a digital testing waiver.

⁶¹ Fisher Broadcasting-Oregon request at 1-2. KVAL-DT was granted a use-or-lose waiver until 30 days after the effective date of the amendments to section 73.624(d) of the Commission's rules. *See User or Lose Order, supra* n. 49.

⁶² *Id.* at 2.

⁶³ Hoak Media request at 1.

⁶⁴ *Id.* at 2.

⁶⁵ The appropriate comparison should be current coverage with authorized coverage pre-transition.

entitled to a six-month digital testing waiver.⁶⁶

24. Hoak Media of Nebraska License, L.L.C., licensee of KNOP-DT (NBC), North Platte, Nebraska, states that the station needs to use a side mounted antenna because it will use its top mounted analog antenna post transition but the antenna cannot be moved at this time.⁶⁷ As a result, the station claims it is unable to serve 70.6 percent of predicted DTV coverage area.⁶⁸ Although it appears that this request also wrongly compares current service with post-transition service,⁶⁹ Commission records indicate that KNOP-DT can only serve 51.2 percent of the population that it is authorized to serve by its pre-transition construction permit. We also note that the percentage loss of area coverage would be as great, or greater, than the population loss. We find that KNOP-DT is entitled to a six-month digital testing waiver based on coverage losses occasioned by the necessity to use a side mounted antenna.⁷⁰

25. WTVG, Inc., licensee of WTVG-DT (ABC), Toledo, Ohio, states that the station needs to use a side mounted antenna because its analog antenna is installed at the top of its tower.⁷¹ The station states that it plans to use its analog channel post-transition so it must wait until it ceases analog broadcasting to use the top position for its digital antenna.⁷² The station is unable to serve 16.8 percent of the area predicted to be served by its initial DTV allotment and 33.6 percent of area within its analog grade B contour with side mounted antenna.⁷³ The licensee states further that in its use-or-lose waiver request, it reported that it served 81.84 percent of population served by its initial DTV allotment but the showing required for use or lose purposes depends on population comparison and not area comparisons.⁷⁴ We find that WTVG-DT is eligible for a six-month digital testing waiver because its coverage area is substantially reduced due to the necessity to use a side mounted antenna.

26. West Virginia Media Holdings, LLC, licensee of WTRF-DT (CBS), Wheeling, West Virginia states that the station needs to use a side mounted antenna because its analog antenna is on top of its tower and switching now would cause loss of service to analog viewers.⁷⁵ The station intends to use its analog channel 7 for digital service post transition but its pre-transition operation and construction permit are on UHF channel 32.⁷⁶ Its side mounted antenna serves only 24.9 percent of the area and 14 percent of the population predicted to be served by its post-transition facilities.⁷⁷ Although it appears

⁶⁶ KHAS-DT was also granted a use-or-lose waiver until February 17, 2009 due to the necessity to use a side mounted antenna. *See Use or Lose Order, supra*, n. 49, at 17.

⁶⁷ Hoak Media request at 3.

⁶⁸ *Id.* at 2.

⁶⁹ The appropriate comparison should be current coverage with authorized coverage pre-transition.

⁷⁰ KNOP-DT was also granted a use-or-lose waiver until February 17, 2009 due to the necessity to use a side mounted antenna. *See Use or Lose order, supra*, n. 49, at 17.

⁷¹ According to the *Use or Lose Order*, WTVG-DT filed a request for a use or lose waiver before it had received its tentative channel designation due to interference conflicts and thus did not know whether it would be required to meet the 80percent or the 100 percent coverage requirements. The station has now received its tentative channel designation and is subject to the 80 percent requirement. WTVG-DT was granted a use-or-lose waiver until 30 days after the effective date of amendments to section 73.624 (d) of the Commission's rules. *See Use or Lose Order, supra* n. 49, at 15 and Appendix B.

⁷² WTVG Inc. request at 2.

⁷³ *Id.*

⁷⁴ *Id.* at n. 4.

⁷⁵ West Virginia Media Holdings request at 1-2.

⁷⁶ *Id.* at 2.

⁷⁷ *Id.*

that this request wrongly compares current service with post transition service,⁷⁸ Commission records indicate that the station can serve only 16.3 percent of its predicted pre-transition population. We find that WTRF-DT is eligible for a six-month digital testing waiver due to its substantially reduced coverage area caused by the necessity to use a side mount antenna.⁷⁹

27. Hoak Media of Wichita Falls License, LLC, licensee of KAUZ-DT (CBS), Wichita Falls, Texas, states that the station needs to use a side mounted antenna because its analog antenna is at the top tower position and cannot be moved until after the transition.⁸⁰ The station claims it is unable to serve 17.1 percent of the area predicted to be served by post transition facilities.⁸¹ On July 2, 2007 the licensee filed a supplement to its waiver request explaining that it is currently operating reduced power facilities pursuant to special temporary authority. It further states that KAUZ-DT is presently unable to serve 17.1 percent of its pre-transition coverage area and 31.5 percent of its predicted population because of the side mounted position of its antenna. We find that KAUZ-DT is eligible for a six-month digital testing waiver.

28. Flint License Subsidiary Corporation, licensee of WJRT-DT (ABC), Flint, Michigan, asserts that its digital signal coverage area is currently limited due to the necessity of using a side mounted digital antenna.⁸² Its analog antenna is mounted at the top of the tower and the station will use this antenna for post transition digital operation.⁸³ WJRT-DT is unable to serve 12.5 percent of its predicted coverage area and 13.6 percent of the area within its analog Grade B contour.⁸⁴ The station admits that it demonstrated it served 96.9 percent of its predicted population for purposes of complying with the use-or-lose deadline but states that the demonstration for purposes of a testing waiver requires coverage area comparisons rather than population.⁸⁵ We deny this request because, as discussed above, the loss of digital coverage area cannot be considered substantial when the station is able to serve almost 97 percent of its predicted population. WJRT-DT is subject to the July 15, 2007 digital testing deadline.

29. KTRK Television, Inc., licensee of KTRK-DT (ABC), Houston, Texas, states that the station needs to use a side mounted antenna because it will use its top mounted analog antenna post transition.⁸⁶ As a result, it is unable to serve 15.5 percent of its predicted digital coverage area and 17.1 percent of the area within its analog grade B contour.⁸⁷ The station notes that its request for waiver of the Commission's use-or-lose deadline asserted that the station served 98.92 percent of its predicted population but states that this digital testing waiver request should be evaluated based on area coverage and not population comparisons.⁸⁸ We deny KTRK Television, Inc.'s request for waiver because, as discussed above, its loss of coverage is not substantial, given that it can serve 98.92 percent of its predicted population. KTRK-DT is subject to the July 15, 2007 digital testing deadline.

⁷⁸ The appropriate comparison should be current coverage with authorized coverage pre-transition.

⁷⁹ WTRF-DT was also granted a use-or-lose waiver until February 17, 2009 due to the necessity to use a side mounted antenna. *Use or Lose Order, supra* n. 49, at 18 and Appendix C.

⁸⁰ Hoak Media request at 2.

⁸¹ *Id.*

⁸² WJRT-DT also was granted a use or lose waiver until February 17, 2009. *See Use or Lose Order, supra*, n. 49.

⁸³ Flint Licensee Subsidiary Corp. request at 2.

⁸⁴ *Id.*

⁸⁵ *Id.* at 2, note 4.

⁸⁶ KTRK-DT was granted a use-or-lose waiver until February 17, 2009. *See Use or Lose Order, supra*, n. 49.

⁸⁷ KTRK Television, Inc. request at 2.

⁸⁸ *Id.* at 2, note 4.

30. ABC Holding Company, Inc., licensee of KABC-DT (ABC), Los Angeles, California, states that the station needs to use a side mounted antenna because it will use its top mounted analog antenna for digital operations post transition and thus the analog antenna cannot be moved at this time.⁸⁹ It further states that the station is unable to serve 19.5 percent of the predicted DTV coverage area and 14.9 percent of the area within its analog Grade B contour.⁹⁰ The licensee admits that the station represented that it served 98.43 percent of population when it requested a use-or-lose waiver but that evaluation of this request is to be based on area and not population comparisons.⁹¹ We deny the request because, as discussed above, the station's loss of coverage is not substantial given that it is able to reach 98.43 percent of its predicted population. We also note that much of the coverage loss is over land areas that are sparsely populated. Accordingly, KABC-DT is subject to the July 15, 2007 digital testing deadline.

31. South West Oregon Television Broadcasting Corporation, permittee of KPIC-DT (CBS), Roseburg, Oregon, states that the station's analog antenna is currently top mounted on its tower and the station is forced to use a side mounted directional digital antenna which will be replaced by a top mounted omni-directional antenna post-transition.⁹² The request states that the station uses multiple translator facilities to serve a highly dispersed viewing audience in a very mountainous area.⁹³ The request notes that the translator signals cannot be tested at this time and thus asserts that allowing testing of KPIC-DT's digital signal would be unfair.⁹⁴ We find that the request fails to present any evidence of a substantially reduced coverage area due to a side mounted antenna, and thus we deny its request for waiver. KPIC-DT did not request a use-or-lose waiver and its facility is fully licensed at this time, so it should be serving its authorized area and population. With respect to the station's translator facilities, these are not subject to testing and therefore no digital testing waiver is necessary for translator signals.⁹⁵

32. KGO Television, Inc., licensee of KGO-TV (ABC), San Francisco, California states that the station needs to use a side mounted digital antenna because its analog antenna is using the position on top of its tower. The station plans to use its analog antenna for post-transition digital operations.⁹⁶ As a result, it is unable to serve 26.0 percent of area predicted to be served by initial DTV allotment and 29.6 percent of the area within its analog Grade B contour.⁹⁷ We find that KGO-TV is not entitled to a waiver based on a comparison of predicted coverage areas pre- and post-transition because, as demonstrated by its own engineering statement, most of the area lost is over water and there is not a substantial loss of coverage over populated area on land. Thus, most of the reduction in service area does not affect television service to a substantial number of people. We deny KGO Television's request for waiver, and the station is subject to the July 15, 2007 digital testing deadline.

⁸⁹ ABC request at 1.

⁹⁰ *Id.* at 2.

⁹¹ *Id.* at 2, note 4.

⁹² South West Oregon Television Broadcasting Corp. request at 1.

⁹³ *Id.*

⁹⁴ *Id.* at 2.

⁹⁵ SHVERA provides that the testing deadline for translator stations is one year after the date on which the Commission completes all actions necessary for the allocation and assignment of digital television license to television translator stations. 47 U.S.C. § 339 (a)(2)(D)(vii)(II). The Commission has not yet taken such actions

⁹⁶ KGO Television, Inc. request at 1.

⁹⁷ *Id.* at 2.

IV. ORDERING CLAUSES

33. ACCORDINGLY, IT IS ORDERED that the requests of the television stations set forth in Appendix A of this Order for waiver of the July 15, 2007 digital signal testing deadline ARE GRANTED and the first permissible date for digital testing for these stations IS EXTENDED six months from July 15, 2007 to January 15, 2008. In order to ensure action before the statutory expiration date of the waivers granted herein, any further extension request must be filed no later than November 15, 2007, 60 days prior to this expiration date.

34. IT IS FURTHER ORDERED that the requests of the television stations set forth in Appendix B of this Order for waiver of the July 15, 2007 digital signal testing deadline ARE DENIED, and subscribers may initiate digital signal testing of these stations on or after July 15, 2007.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

APPENDIX A**STATIONS GRANTED WAIVERS**

KFBB-DT	Great Falls, Montana
KDLH-DT	Duluth, Minnesota
WFXL-DT	Albany, Georgia
WALB-DT	Albany, Georgia
WABC-DT	New York, New York
KLAX-DT	Alexandria, Louisiana
WNKY-DT	Bowling Green, Kentucky
WWNY-DT	Carthage, New York
WNYF-DT	Watertown, New York
KIEM-DT	Eureka, California
WBOY-DT	Clarksburg, West Virginia
KCBY-DT	Coos Bay, Oregon
KVAL-DT	Eugene, Oregon
KHAS-DT	Hastings, Nebraska
KNOP-DT	North Platte, Nebraska
WTVG-DT	Toledo, Ohio
WTRF-DT	Wheeling, West Virginia
KAUZ-DT	Wichita Falls, Texas

APPENDIX B**STATIONS DENIED WAIVERS**

KFYR-DT	Bismarck, North Dakota
WPVI-DT	Philadelphia, Pennsylvania
KRII-DT	Chisholm, Minnesota
WJRT-DT	Flint, Michigan
KTRK-DT	Houston, Texas
KABC-DT	Los Angeles, California
KPIC-DT	Roseburg, Oregon
KGO-DT	San Francisco, California